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**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

In the Matter of Application of Ducor
Telephone Co. (U 1007 C) to Modify
Intrastate Revenue Requirement and Rate
Design and Adjust Selected Rates.

A.23-10-008

**APPLICATION OF
DUCOR TELEPHONE COMPANY (U 1007 C)
FOR REHEARING OF DECISION 25-08-010**

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1 **I. INTRODUCTION**

2 Pursuant to Public Utilities Code Section 1732 and Rule 16.1 of the Rules of Practice and
3 Procedure (“Rules”) of the California Public Utilities Commission (“Commission”), Ducor
4 Telephone Company (“Ducor”) hereby applies for rehearing of Decision (“D.”) 25-08-010 (the
5 “Decision”), the decision resolving Ducor’s test year 2025 general rate case. The Decision was
6 formally issued on August 22, 2025, so this application for rehearing is timely under Public
7 Utilities Code Section 1731(b)(1) and Rule 1.15.

8 The Commission’s adjudication of this rate case involved the resolution of numerous
9 disputed issues, but this application for rehearing concerns only one aspect of the Decision,
10 which presents significant legal errors and strips Ducor of \$129,627 in revenues that should be
11 provided under a straightforward application of the Commission’s ratemaking rules.
12 Specifically, the Decision improperly rejects a revaluation of Ducor’s assets stemming from
13 Ducor’s 2021 transfer of control, even though the use of “fair market value” is backed by
14 established accounting standards and federal determinations regarding Ducor’s assets that the
15 Commission has expressly endorsed as the exclusive standard for computing rate base for Ducor
16 and other participants in the California High Cost Fund A (“CHCF-A”) program. As a matter of
17 law, the Commission cannot deviate from the application of its own ratemaking standards in an
18 individual company’s rate case just because it finds the results undesirable.¹ Ducor computed its
19 rate base in keeping with Commission’s rules from D.21-06-004 and supported its conclusions
20 with extensive, un rebutted evidence, but the Decision unlawfully ignores the weight of the
21 record and relies upon arbitrary and capricious reasoning in an effort to avoid the straightforward
22 numerical conclusions compelled by the Commission’s own rules.

23

24 ¹ See *Calaveras Tel. Co. v. Pub. Util. Comm’n.* (2019) 39 Cal. App. 5th 972, 983–84 (finding that the
25 Commission abused its discretion when it failed “to proceed in the manner required by law and abused its
26 discretion because its resolution and decision do not conform with the CHCF-A implementing rules”); see
27 also *S. Cal. Edison Co. v. Pub. Util. Comm’n.* (2006) 140 Cal. App. 4th 1085, 1091, 1104–107 (holding
28 that the Commission “did fail to proceed in the manner required by law in that it violated its own
procedural rules”); *Golden State Water Co. v. Pub. Util. Comm’n.*, 16 Cal. 5th 380, 394–95 (2024) (holding
that the Commission erred when it failed to comply with the statutory scoping memo requirement); *S. Cal.
Edison Co. v. Pub. Util. Comm’n.* (2000) 85 Cal. App. 4th 1086, 1090, 1105–1106 (the Commission abused
its discretion for engaging in a practice inconsistent with G.O. 96-A).

1 The Decision’s insistence on utilizing “original value” for Ducor’s test year 2025 rate
2 base reflects four distinct legal errors. *First*, the Decision irreconcilably departs from the
3 ratemaking standards in D.21-06-004, which mandate the use of the most recent federal cost
4 study adopted by the National Exchange Carrier Association (“NECA”) as the foundation of rate
5 base calculations for “small independent telephone corporations” participating in the CHCF-A
6 program. This constitutes a failure to “proceed[] in the manner required by law” under Public
7 Utilities Code Section 1757(a)(2).² *Second*, the Decision attempts to justify its departure from
8 D.21-06-004 through arbitrary and capricious reasoning, including references to authorities that
9 do not support the Decision’s conclusion and mischaracterizations of the evidentiary record. The
10 Decision therefore reflects an abuse of discretion, in violation of Public Utilities Code Section
11 1757(a)(5).³ *Third*, the outcome of the decision arbitrarily reduces Ducor’s CHCF-A support by
12 \$129,627 annually and thereby effectuates a confiscation of Ducor’s property under applicable
13 constitutional takings standards, in violation of Public Utilities Code Section 1757(a)(6).⁴
14 *Fourth*, the Decision contradicts the weight of the record, which includes accounting guidance,
15 compelling expert testimony, and other evidence that the fair market value of Ducor’s assets is
16 the best reflection of its rate base. This departure from “substantial evidence in light of the
17 whole record” is a violation of Public Utilities Code Section 1757(a)(4).⁵

18 Individually, these legal errors each represent an independent basis for annulling the
19 Decision if the use of “original value” is not corrected. Collectively, these infirmities represent a
20 powerful indictment of the Decision, and Ducor asks that this specific aspect of the Decision be
21 corrected so that a petition for writ of review can be avoided and Ducor can continue operating
22 its small, rural telephone company without the reduced revenue or accounting confusion that will
23 be caused if the Decision is not modified to remove the legal errors set forth herein.

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26 ² Pub. Util. Code § 1757(a)(2).

27 ³ Pub. Util. Code § 1757(a)(5).

28 ⁴ Pub. Util. Code § 1757(a)(6); U.S. Const., amends. V, XIV; Cal. Const., art. I, § 19; *Duquesne Light Co. v. Barasch* (1989) 488 U.S. 299 (“*Duquesne*”); *Federal Power Commission v. Hope Natural Gas Co.* (1944) 320 U.S. 591 (“*Hope*”).

⁵ Pub. Util. Code § 1757(a)(4).

1 **II. FACTUAL, PROCEDURAL, AND LEGAL BACKGROUND**

2 **A. Procedural History and Events Leading to the Final Decision**

3 Ducor initiated this proceeding on October 2, 2023, through an Application submitted in
4 accordance with the “rate case plan” for “small independent telephone corporations.”⁶ The
5 Application was essential to preserve Ducor’s access to CHCF-A support, as companies must file
6 formal rate cases every five years to avoid mandatory reductions in funding.⁷ Ducor’s
7 Application satisfied all procedural and pre-application requirements under the rate case plan,⁸
8 and it was accompanied by testimony from Ducor’s Chief Executive Officer (“CEO”), Mr. Eric
9 Votaw, and the testimony of two experts—one addressing rate affordability (Dr. Lehman) and
10 the other presenting the ratemaking calculations summarizing Ducor’s proposed relief (Mr.
11 Huckaby).⁹ The Application utilized a test year of 2025, and computed a revenue requirement
12 and a corresponding rate design for that test period, in accordance with the ratemaking standards
13 in Public Utilities Code Section 275.6.¹⁰

14 On November 1, 2023, the Public Advocates Office (“Cal Advocates”) protested the
15 Application, consistent with its pattern of protesting virtually every rural telephone company rate
16 case application.¹¹ Cal Advocates’ Protest did not identify the updated valuation of Ducor’s
17 property as a concern, nor did it suggest that the Commission should deviate from the standards
18 in D.21-06-004 in adjudicating Ducor’s rate case. Ducor replied to Cal Advocates’ Protest on
19 November 9, 2023.¹² No other parties joined the proceeding.

20 The procedural schedule continued with the typical pre-hearing events. The Commission
21 held a Pre-Hearing Conference (“PHC”) in this proceeding on January 19, 2024, followed by a

22 ⁶ See D.15-06-048, Appendix A (establishing timelines and requirements for rate cases for “Small ILECs”
23 who receive CHCF-A support); D.20-08-011, Appendix C (updating timeframes for submission of rate
24 cases, including establishment of October 2023 deadline for Ducor and other “Group C” companies); *see*
25 *also Application* at 1; Pub. Util. Code § 275.6(b)(6) (defining “small independent telephone corporations”).

⁷ See D.15-06-048, Appendix A; D.20-08-011, Appendix C; *see also* D.91-09-042, Appendix D
(prescribing mandatory reductions in CHCF-A if companies do not file rate cases in accordance with the
prescribed cycle).

⁸ *Application* at 32–33.

⁹ See Exh. DTC-1 (*Votaw Opening Testimony*); Exh. DTC-3 (*Huckaby Opening Testimony*); Exh. DTC-6
(*Lehman Opening Testimony*).

¹⁰ See Pub. Util. Code § 275.6(c).

¹¹ See *Cal Advocates Protest* (Nov. 1, 2023).

¹² See *Ducor Reply to Protest* (Nov. 9, 2023).

1 Scoping Ruling on March 4, 2024.¹³ The Scoping Ruling was amended on April 18, 2024, but
2 the adjustments to the scope of the proceeding have no relationship to this rehearing request.¹⁴ A
3 virtual Public Participation Hearing occurred on March 12, 2024. Cal Advocates supplied its
4 testimony on April 12, 2024, in the form of four narrative “reports,”¹⁵ one of which addressed
5 “proposed plant additions and rate base.”¹⁶ In Cal Advocates’ rate base testimony, Cal
6 Advocates indicated its opposition to the use of fair market value for Ducor’s assets for the first
7 time.¹⁷ Ducor countered Cal Advocates’ testimony through the rebuttal testimony of Mr. Votaw
8 and the expert rebuttal testimony from Mr. Huckaby.¹⁸

9 Evidentiary hearings took place on five hearing dates spread out over a 12-day period
10 from June 6, 2024, to June 17, 2024. Opening and reply briefs were submitted on July 26, 2024,
11 and August 23, 2024, respectively. After the briefing, the assigned Administrative Law Judge
12 (“ALJ”) sought further information through a ruling dated October 2, 2024.¹⁹ That ruling
13 requested clarifications regarding how to integrate the adjustments adopted for cost of capital in
14 D.24-09-021 and how to update Ducor’s federal funding revenues to reflect the appropriate
15 allocation to the intrastate jurisdiction. Later, on November 7, 2024, the ALJ oversaw a status
16 conference to discuss the potential submission of additional information into the record regarding
17 the mechanics of Ducor’s asset revaluation and further accounting documentation supporting the
18 revaluation. The ALJ followed up on this hearing with a ruling on November 19, 2024, which
19 invited parties to comment on the potential admission of additional data pertaining to asset
20 revaluation.²⁰ The parties each responded to this ruling on December 2, 2024. A further ALJ
21 ruling was issued on December 10, 2024, which confirmed that Ducor must supply supplemental

22 ¹³ *Scoping Ruling* at 3.

23 ¹⁴ *Amended Scoping Ruling* at 4-5.

24 ¹⁵ See Exh. PUBADV-5 (Villarreal Testimony), Cover Page; Exh. PUBADV-7 (Selvalakshmirajeswara
25 Testimony), Cover Page; Exh. PUBADV-3 (Bartulo Testimony), Cover Page; Exh. PUBADV-1 (Ye
26 Testimony), Cover Page.

27 ¹⁶ See Exh. PUBADV-3 (Bartulo Testimony).

28 ¹⁷ Exh. PUBADV-1 (Ye Testimony) at 4:1-5:11, Exhibit C-9 Cal Advocates Proposed Results of
Operations (Ducor); Exh. PUBADV-3 (Bartulo Testimony) at 26:1-27:22, 30, Table 3-1, Exhibit D-14 Cal
Advocates Ducor Rate Base Adjustments.

¹⁸ Exh. DTC-2 (*Votaw Rebuttal Testimony*) at 16:20-23:18; Exh. DTC-4 (*Huckaby Rebutal Testimony*) at
7:11-23:8.

¹⁹ *ALJ Ruling Requiring Additional Information* (Oct. 2, 2024).

²⁰ *ALJ Ruling Inviting Comments Regarding Admission of Additional Information* (Nov. 19, 2024).

1 information to Communications Division staff regarding the revaluation of assets, but that the
2 data would not become part of the formal evidentiary record in the proceeding.

3 Following these events at the end of 2024, a significant delay occurred in the
4 Commission’s processing of the rate case. A proposed decision was not issued until July 11,
5 2025, and, following comments from the parties, it was adopted with limited revisions on August
6 14, 2025. The final decision was not formally issued until August 22, 2025, and it was given the
7 decision number D.25-08-010, the Decision challenged through this application for rehearing.

8 The Decision adopted an intrastate revenue requirement for Ducor of \$2,544,993, but this
9 figure excludes \$129,627 in return on rate base, depreciation expense, tax recovery, and related
10 costs that were related to the asset revaluation.²¹ The Decision likewise reduced Ducor’s CHCF-
11 A draw from its proposed level, creating a shortfall of \$129,627 in Ducor’s CHCF-A draw and
12 overall revenues as a direct consequence of the Commission’s failure to acknowledge the
13 revaluation of assets reflected in the Decision. This shortfall and the Commission’s unjustified
14 rejection of the revaluation have given rise to the legal errors identified in this application for
15 rehearing.

16 **B. An Overview of Ratemaking Standards Governing “Small Independent**
17 **Telephone Corporations”**

18 As a “small independent telephone corporation” and a participant in the CHCF-A
19 program, Ducor must be regulated on a “rate-of-return” basis.²² In fulfilling its statutory duties,
20 the Commission must “establish[] a revenue requirement” for Ducor, which is a measurement of
21 the company’s costs of service, and “then fashion[] a rate design to provide the company a fair
22 opportunity to meet the revenue requirement.”²³ The rate-of-return framework has constitutional
23 roots, and reflects the requirements of the Fifth and Fourteenth Amendments that utility rate
24 structures must “afford sufficient compensation” and provide adequate revenue “not only for
25

26 ²¹ D.25-08-010, Appendix A.

27 ²² Pub. Util. Code § 275.6(c)(2) (“[i]n administering the CHCF-A program the commission shall . . .
28 [e]mploy rate-of-return regulation.”); *see also* Pub. Util. Code § 275.6(b)(6) (defining “[s]mall independent
telephone corporations” to mean “rural incumbent local exchange carriers subject to commission
regulation.”).

²³ Pub. Util. Code § 275.6(b)(5).

1 operating expenses, but also the capital costs of the business.”²⁴ The California appellate courts
2 have also consistently recognized the importance of ensuring that utilities have a fair opportunity
3 to earn a reasonable return on the “value of [their] property devoted to public use.”²⁵

4 A central feature of rate-of-return regulation is the concept of “rate base,” which signifies
5 the “value of a telephone corporation's plant and equipment that is reasonably necessary to
6 provide regulated voice services and access to advanced services, and upon which the telephone
7 corporation is entitled to a fair opportunity to earn a reasonable rate of return.”²⁶ Rate base is
8 multiplied by the Commission’s designated “cost of capital” to determine a return on rate base
9 that compensates the utility for continuing to commit its property to public use in providing
10 regulated service. No statutory directive or Commission decision limits “rate base” calculations
11 to “original cost;” rather, the statutory guidance regarding “rate base” simply refers to the “value
12 of a telephone corporation’s plant and equipment,” without any restriction or preference for a
13 specific methodology.

14 Building on the definitions in the CHCF-A statute, the Commission has adopted a
15 straightforward formula for computing rate base. Following a fully litigated proceeding that
16 included extensive hearings in the CHCF-A rulemaking (R.11-11-007), the Commission adopted
17 D.21-06-004, the CHCF-A “Phase 2 Ratemaking Decision.” This decision clarifies that Ducor
18 and the other small independent telephone corporations “*shall use* the rate base amount from the
19 National Exchange Carrier Association’s most recent cost study as a proposed rate base for each
20 General Rate Case Test Year.”²⁷ The Commission further confirmed that companies must use
21 “NECA’s most recent cost study” as a “starting point for forecasting GRC Test Year rate base,”
22 with adjustments exclusively for “new additions, closure of plant[], or other changes that have
23 occurred *since the year of the NECA cost study*.”²⁸ No other adjustments to the NECA cost study

24 U.S. Const., amends. V, XIV; *Duquesne, supra*, 488 U.S. 299, 308; *Hope, supra*, 320 U.S. 591, 603;

25 See *San Francisco v. Pub. Util. Comm’n* (1971) 6 Cal.3d 119, 129 (“the basic principle of utility rate
26 setting . . . is to establish a rate which will permit the utility to recover its costs and expenses plus a
reasonable return on the value of property devoted to public use”); accord *S. Cal. Gas Co. v. Pub. Util.*
27 *Comm’n* (1979) 23 Cal.3d 470, 476; *SFPP, L.P. v. Pub. Util. Comm’n* (2013) 217 Cal.App.4th 784, 790.

26 Pub. Util. Code § 275.6(b)(2).

27 D.21-06-004 at 44 (OP 10) (emphasis added).

28 D.21-06-004 at 40 (COL 9) (emphasis added).

1 rate base figure are permitted. The Commission adopted this uniform approach to rate base “[t]o
2 support transparency and to ensure that cost recovery is appropriate.”²⁹ The CHCF-A Phase 2
3 Ratemaking Decision does not confine rate base to “original cost,” nor does it permit the
4 Commission to deviate from the NECA rate base figures except as to updates occurring since the
5 date of the NECA cost study.

6 Ducor applied precisely the methodology prescribed in D.21-06-004 in computing its test
7 year rate base using the 2022 NECA cost study.³⁰ The Decision departs from this methodology
8 by insisting on the use of “original cost,” even though the NECA cost study that forms the
9 mandatory basis of rate base does not use “original cost;” it acknowledges the fair market value
10 of Ducor’s assets following its 2021 transfer of control, as permitted under Accounting Standards
11 Codification (“ASC”) 805 and Federal Communications Commission (“FCC”) rules.³¹

12 **C. Ducor’s Transfer of Control and Execution of an Asset Revaluation**
13 **According to Established Accounting Standards**

14 As the Decision acknowledges, ownership of Ducor changed in 2021 following
15 Commission approval of a transfer of control to Mr. Votaw and Ms. Vellucci.³² Neither Mr.
16 Votaw nor Ms. Vellucci were “affiliates” of Ducor at the time of the transfer, nor did they have
17 any familial relationship to Ducor’s prior owners.³³ Therefore, the transaction qualified for a
18 revaluation of assets pursuant to ASC 805, an established accounting mechanism by which the
19 fair market value of a company’s assets can be “pushed down” to an operating company’s
20
21

22 ²⁹ D.21-06-004 at 33.

23 ³⁰ D.21-06-004 at 44 (OP 10) (mandating the use of the most recent NECA cost study as the basis for rate
24 base calculations in a rate case); Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 18:5-9 (“Ducor’s latest
25 submitted NECA cost study at the time of the filing of this general rate case was the 2022 cost study, which
remains the latest cost study submitted to NECA, as the 2023 NECA cost study is not due to NECA until
July 31, 2024.”)

26 ³¹ See *In the Matter of Comprehensive Review of the Part 32 Uniform System of Accounts*, WC Docket No.
14-130, *Report and Order*, FCC 17-15 (rel. Feb. 24, 2017) at ¶ 23 (“we allow carriers to reprice an asset at
market value after a merger or acquisition.”).

27 ³² See D.21-11-006 at 12 (OP 1).

28 ³³ Exh. DTC-2 (*Votaw Rebuttal Testimony*) at 20:11-18 (“This acquisition was neither an affiliate
transaction nor a transaction involving ‘related parties.’ It was a bargained-for, arms-length acquisition that
is plainly eligible for ASC 805 treatment.”).

1 balance sheet, thus altering the book value of the assets.³⁴ An independent accounting form,
2 BDO USA, LLP (“BDO”), performed a comprehensive review and conducted a fair market
3 value analysis of Ducor’s assets, concluding that their value exceeds historical cost.³⁵ This fair
4 market value of the assets was then “pushed down” to the individual operating companies within
5 Varcomm, including Ducor, to properly reflect the current value of the assets.³⁶ The fair market
6 value was then used to update Ducor’s financial statements, subject to a downward true-up
7 adjustment because the purchase price was lower than the collective value of the assets.³⁷ These
8 revised financial statements were confirmed by another accounting firm, Moss Adams LLP,³⁸
9 and they were used to inform rate base calculations for federal cost study purposes from 2021
10 forward.³⁹

11 Ducor included the fair market value of its assets that resulted from the ASC 805 “push
12 down” in its rate base calculations in each of the NECA cost studies for 2021, 2022, and 2023,
13 and NECA accepted each of these cost studies and the asset revaluation contained therein.⁴⁰

14 ³⁴ Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 8:4 (explaining applicability of ASC 805 to “business
15 combinations”); *see also id.*, Exhibit NH-R-2 (ASC 805), § 805-10-25-1 (directing “an entity to determine
whether a transaction or event is a business combination”).

16 ³⁵ *See* DTC-3 (*Huckaby Opening Testimony*) at 53:4-22 (describing BDO’s procedure for revaluing assets),
17 Exhibit NH-1, “Telephone Plant in Service” (noting “Balance 12-31-25) prior to computing “average” rate
base).

18 ³⁶ *See* DTC-3 (*Huckaby Opening Testimony*) at 53:4-22 (describing BDO’s procedure for revaluing assets),
19 Exhibit NH-1, “Telephone Plant in Service” (noting “Balance 12-31-25) prior to computing “average” rate
base).

20 ³⁷ Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 13:14-15, 17:1-13 (clarifying that there was no “goodwill”
associated with the revaluation of the assets because “Varcomm actually paid less for the assets than the
fair market value determined by BDO.”); DTC-3 (*Huckaby Opening Testimony*) at 53:24-54:19 (describing
“bargain purchase” adjustment).

21 ³⁸ Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 12:12-25 (describing Moss Adams’ review of the ASC 805
22 application, concluding that “[n]o exception was taken with respect to management’s conclusion regarding
the applicability of FASB ASC 805, with the change of control event or the accounting practices
23 implemented.”).

24 ³⁹ Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 18:13-15 (“Yes, the ASC 805 adjustments were included
in the [TPIS] and Accumulated Depreciation balances presented in the NECA cost studies for both 2021
and 2022.”).

25 ⁴⁰ RT, Vol. 2 at 251:13-23 (“The first year that that was utilized for ratemaking for federal purposes and the
cost study was the 2021 cost study, which was submitted July 31st, 2022. It was again utilized in the 2022
26 cost study that was submitted July 31st, 2023. And that July 2022 cost study that was again submitted July
31st, 2023 is the starting base for Ducor’s rate case application”); Exh. DTC-4 (*Huckaby Rebuttal
27 Testimony*) at 18:15-24 (noting that NECA performed a review of the 2021 and 2022 cost studies and
concluded the review with “no material changes”); *see also Ducor Response to ALJ Ruling Inviting
28 Comments Regarding Admission of Additional Information* (Dec. 2, 2024) at 2 (“Ducor is in possession of

1 Consistent with the Commission’s express directives in D.21-06-004 to use the most recent
2 NECA cost study for intrastate rate base calculations, Ducor relied upon its 2022 cost study to
3 inform the rate base calculations in this proceeding, with appropriate adjustments for impacts
4 since 2022, including plant additions and retirements.⁴¹ Notably, neither the transfer of control
5 nor the ASC 805 push down, nor the bargain purchase adjustment are “changes that have
6 occurred since the year of the NECA cost study”—each of these events pre-dates the NECA cost
7 study and thus each is incorporated into the NECA cost study accepted by NECA in 2022,
8 which, as a matter of law, must be the basis for Ducor’s rate base in its rate case.

9 **D. The Record Evidence Supporting Ducor’s Rate Base Calculation**

10 The evidentiary record overwhelmingly supports Ducor’s rate base calculation, which
11 relies on the fair market value of its assets based on the revaluation following Ducor’s 2021
12 transfer of control. Among the support provided for Ducor’s rate base calculation includes
13 opening testimony and rebuttal testimony from Mr. Votaw, Ducor’s CEO and Mr. Huckaby, a
14 ratemaking expert from Moss Adams (now known as Baker Tilly), and the testimonies’
15 supporting documentation.⁴² Ducor also briefed this issue following the evidentiary hearings in
16 this proceeding.⁴³

17 Ducor’s 2021 transfer of control, which qualified as “business combination” under ASC
18 805, triggered a revaluation of Ducor’s assets using the “fair value model.”⁴⁴ BDO then
19 independently evaluated Ducor’s assets and assigned an appropriate “fair market value.”⁴⁵ Next,

20 _____
21 an email confirmation from NECA that the 2022 and 2023 cost studies (submitted in 2023 and 2024,
22 respectively) were accepted as submitted”).

23 ⁴¹ Exh. DTC-3 (*Huckaby Opening Testimony*) at 51:26-28 (“Pursuant to the Commission’s direction in
24 D.21-06-004, I started with the Telecommunications Plant in Service as of December 31, 2022, from
25 Ducor’s 2022 NECA cost study”).

26 ⁴² See generally, Exh. DTC-01 (*Votaw Opening Testimony*), Exh. DTC-03 (*Huckaby Opening Testimony*),
27 Exh. DTC-02 (*Votaw Rebuttal Testimony*), Exh. DTC-04 (*Huckaby Rebuttal Testimony*).

28 ⁴³ *Ducor Opening Brief* at 26-32; *Ducor Reply Brief* at 8–10.

⁴⁴ Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 8:4, Exhibit NH-R-2 (ASC § 805-10-25-1) (directing “an
entity to determine whether a transaction or event is a business combination”).

Exh. DTC-3 (*Huckaby Opening Testimony*) at 53:4-22 (summarizing the “fair market value” update to
Ducor’s assets).

⁴⁵ Exh. DTC-3 (*Huckaby Opening Testimony*) at 53:4-9; see also Exh. DTC-2 (*Votaw Rebuttal Testimony*)
at 18:13-16 (the “specific distribution of the purchase price amongst Ducor’s assets” was performed by an
accounting specialist from BDO USA” and then the results were “reviewed and confirmed” by Moss
Adams).

1 Ducor applied “pushdown accounting in its separate financial statements” to reflect the updated
2 market value of the assets, which is permitted by ASC 805.⁴⁶ The resulting financial statements
3 were formally reviewed by another independent accounting firm, Moss Adams (now Baker
4 Tilly), which confirmed the accuracy of those financial statements.⁴⁷ These financial statements
5 were used to calculate Ducor’s rate base in the 2022 cost study that it submitted to NECA in
6 2023, and that rate base figure was accepted by NECA.⁴⁸ While the impact of the ASC 805
7 update primarily affected rate base, there were also impacts on depreciation⁴⁹ and tax,⁵⁰ thus
8 impacting rate design generally, and Ducor’s CHCF-A draw specifically. Ducor also used this
9 rate base figure in its ratemaking calculations for this rate case, based on the Commission’s
10 directives in D.21-04-004, which require that Ducor “shall use the rate base amount from the
11 National Exchange Carrier Association’s most recent cost study as a proposed rate base for each
12 General Rate Case Test year.”⁵¹

13 **E. The Proffered Justifications in the Decision Relied Upon to Reject Ducor’s**
14 **Rate Base Revaluation and the ASC 805 Push Down**

15 In determining Ducor’s rate base, the Commission was tasked with determining whether
16 it should use the actual and current value of Ducor’s assets or the “original value” of Ducor’s

17 ⁴⁶ Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 13:14-15, Exhibit RH-R-2 (ASC § 805-50-25-4); *see also*
18 Exh. DTC-3 (*Huckaby Opening Testimony*) at 53:25-54:10 (outlining the “bargain purchase adjustment”);
19 *see also* Exh. DTC-2 (*Votaw Rebuttal Testimony*) at 17:22-25 (explaining that the revaluation “results in a
20 more accurate picture of the value of the company’s holdings because it has a direct relationship to a
market event in which a purchaser independently valued and acquired the assets for a bargained-for price”).

21 ⁴⁷ Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 12:12-25 (describing Moss Adams’ review of the ASC 805
application, concluding that “[n]o exception was taken with respect to management’s conclusion regarding
22 the applicability of FASB ASC 805, with the change of control event or the accounting practices
implemented.”); *see also* Exh. DTC-2 (*Votaw Rebuttal Testimony*) at 18:13-16 (the “specific distribution of
the purchase price amongst Ducor’s assets” was performed by an accounting specialist from BDO USA”
23 and then the results were “reviewed and confirmed” by Moss Adams).

24 ⁴⁸ Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 16:9-13 (explaining that NECA approved the 2021 cost
study with the ASC 805 adjustment, explaining that “[a]fter a thorough review process and data requests to
Ducor, NECA accepted the 2021 cost study with only minor, non-substantive modifications, which were
25 not related to the recording of assets at fair market value.”), 18:15-17 (“NECA performed a review of the
2021 and 2022 cost studies and concluded their reviews with no material changes to either cost study,
26 including no changes related specifically to the ASC 805 adjustments.”).

27 ⁴⁹ Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 18:13-15 (explaining that the ASC 805 adjustments were
included in “the Telecommunications Plant in Service . . . and Accumulated Depreciation balances”).

28 ⁵⁰ *Id.* at 22:13-18 (explaining that Ducor’s property tax calculation must use the “Telecommunications
Plant in Service figures that include the FASB ASC 805 adjustment.”).

⁵¹ Exh. PUBADV-11 (D.21-06-004) at 44 (OP 10).

1 assets, which predate the 2021 transfer of control.⁵² The Commission opted to use the outdated
2 “original value” of Ducor’s assets to determine rate base. To support its use of a valuation of
3 Ducor’s assets that predates the 2021 transfer of control, the Commission “gives great weight”
4 to: (1) FCC Report and Order 17-15; (2) Public Utilities Code Section 275.6(b)(2) and D.97-06-
5 066; (3) Public Utilities Code Section 275.6(c)(7); and (4) D.21-06-004 and D.21-11-006.⁵³

6 The Decision acknowledges that FCC Report and Order 17-15 “adopted proposals to
7 align the USOA’s [Uniform System of Accounts] asset accounting rules with Generally
8 Accepted Accounting Principles (GAAP).”⁵⁴ The Decision also acknowledges that, as revised,
9 the USOA rules permit push down accounting.⁵⁵ However, while the Commission “agrees . . .
10 that revaluation of the assets is made permissible by the FCC,” it suggests that revaluation is
11 only permissible if it does not generate significant rate effects, in large part because the FCC did
12 not anticipate significant rate effects in aligning the USOA with GAAP rules.⁵⁶

13 Next, the Commission highlights Public Utilities Code Section 275.6(b)(2), which
14 explains that rate base is based on “the value of a telephone corporation’s plant and
15 equipment.”⁵⁷ Relying on one historic Commission decision involving a transfer of assets and
16 associated transfer of control issues involving “vessel common carriers,” the Decision asserts
17 that the value of a telephone corporation’s plant and equipment should be based on the assets’
18 original value.⁵⁸ Regarding adjustments, the Decision simply notes that an adjustment to the
19 original value of Telephone Plant-in-Service is only “needed if a utility demonstrates that there
20 were changes in assets to provide service.”⁵⁹ The Commission relies upon statements made in
21 Ducor’s transfer of control application to conclude that “there were no changes in the assets that
22 Ducor used to provide service,” and on that basis, determines that the original value of Ducor’s
23 assets should be used to calculate the rate base.

24
25 ⁵² D.25-08-010 at 30.

26 ⁵³ D.25-08-010 at 30.

27 ⁵⁴ D.25-08-010 at 30.

28 ⁵⁵ *Id.* at 30–31.

⁵⁶ *Id.* at 31.

⁵⁷ *Id.* at 32 (citing Pub. Util. Code § 275.6(b)(2)).

⁵⁸ *Ibid.* (citing D.97-06-006 at 28).

⁵⁹ *Ibid.*

1 The Decision then offers a discussion on Public Utilities Code Section 275.69(c)(7),
2 which requires that CHCF-A support “is not excessive so that the burden on all contributors to
3 the CHCF-A program is limited.”⁶⁰ The Commission concludes that Ducor’s proposed rate base
4 “could be considered an undue burden on the contributors to the CHCF-A” based on the
5 Commission’s assessment that Ducor’s proposed rate base “is the artificial result of fluctuations
6 in the assets’ value from a transfer of control.”⁶¹ The Decision states, without authority, that
7 ratepayers “should only be responsible for the asset’s original costs in rate base.”⁶² Separate but
8 related, the Decision explains that in D.21-11-006, which approved Ducor’s transfer of control in
9 2021, the Commission did not approve or assess a fair market value, and therefore, the original
10 value of the assets “should remain unchanged.”⁶³

11 Finally, the Decision addresses D.21-06-004, which established the ratemaking standards
12 for CHCF-A participants. The Decision acknowledges that D.21-06-004 calls for the use of “the
13 rate base amount from the National Exchange Carrier Association’s most recent cost study as a
14 proposed rate base.”⁶⁴ The Decision also acknowledges that NECA accepted Ducor’s push down
15 accounting in its 2022 cost study.⁶⁵ However, despite this, the Commission asserts that it is not
16 “obligated” to accept the rate base figure in the NECA cost study because D.21-06-004 only
17 “indicates that a NECA cost study is a reasonable starting point,” and not “a binding
18 determination.”⁶⁶ On that basis, the Decision concludes that Ducor’s view of D.21-06-004 is
19 overly prescriptive, as the intent behind that decision was to “streamline the general rate case
20 process” and ensure that the CHCF-A participants “were consistent in reporting the allocation of
21 assets to both the FCC and the Commission.”⁶⁷ Ultimately, the Commission relies on its
22 “discretion to evaluate and approve any adjustments for reasonableness” to order the use of the
23 original value of assets in calculating Ducor’s rate base.⁶⁸

24 ⁶⁰ *Ibid.* (citing Pub. Util. Code § 275.6(c)(2)).

25 ⁶¹ D.25-08-010 at 33.

26 ⁶² *Ibid.*

26 ⁶³ *Ibid.*

26 ⁶⁴ *Ibid.*

27 ⁶⁵ *Id.* at 34.

27 ⁶⁶ *Id.* at 34.

28 ⁶⁷ *Ibid.*

28 ⁶⁸ *Id.* at 35.

1 **III. STANDARD OF REVIEW AND SUMMARY OF LEGAL ERRORS**

2 Public Utilities Code Section 1757 prescribes the standard of review for evaluating legal
3 errors in Commission “ratemaking” decisions, and the underlying proceeding that gave rise to
4 the Decision was designated as “ratesetting,”⁶⁹ so the standards in Section 1757 apply. In
5 rejecting Ducor’s current, updated rate base figures following its transfer of control, the Decision
6 commits the following legal errors, violating multiple sub-sections of Section 1757:

7 1. The Decision fails to apply the established ratemaking rules governing CHCF-A
8 participants in computing Ducor’s rate base, even though those standards were recently adopted
9 and specifically applicable to Ducor in D.21-06-004. In deviating from its own requirements, the
10 Commission fails to “proceed[] in the manner required by law,”⁷⁰ and contravenes several
11 appellate precedents confirming that the Commission must follow its own rules unless and until
12 they are changed through a lawful administrative process.⁷¹

13 2. In rejecting Ducor’s rate base calculations, the Decision relies on arbitrary and capricious
14 reasoning and proffered authority that does not support the Decision’s findings. These errors
15 render the Decision’s rate base determination an abuse of discretion.⁷²

16 3. In refusing to acknowledge the current, updated value of Ducor’s assets that have been
17 put to public use, the Decision effectuates a \$129,627 shortfall in Ducor’s revenue requirement
18 and a corresponding unjustified reduction to its anticipated revenues and CHCF-A support.
19 These reductions abridge Ducor’s constitutional right to operate under a rate structure that
20 “afford[s] sufficient compensation” and provides sufficient revenue “not only for operating
21 expenses, but also the capital costs of the business.”⁷³ The Decision thus contravenes both the
22

23 ⁶⁹ Pub. Util. Code § 1757(a); *see also Amended Scoping Ruling* at 7, 11.

24 ⁷⁰ Pub. Util. Code § 1757(a)(2).

25 ⁷¹ *See S. Cal. Edison Co. v. Pub. Util. Comm’n.* (2006) 140 Cal. App. 4th 1085, 1091, 1104–107 (holding
26 that the Commission “did fail to proceed in the manner required by law in that it violated its own
27 procedural rules”); *Golden State Water Co. v. Pub. Util. Comm’n.* (2024) 16 Cal. 5th 380, 394–95 (holding
that the Commission erred when it failed to comply with the statutory scoping memo requirement); *see also*
S. Cal. Edison Co. v. Pub. Util. Comm’n. (2000) 85 Cal. App. 4th 1086, 1090, 1105–1106 (finding the
Commission abused its discretion for engaging in a practice not conforming to G.O. 96-A).

28 ⁷² Pub. Util. Code § 1757(a)(5).

⁷³ *See Duquesne, supra*, 488 U.S. 299, 308; *Hope, supra*, 320 U.S. 591, 603; U.S. Const., amends. V, XIV;
Cal. Const., art. I, § 19.

1 “Constitution of the United States [and] the California Constitution.”⁷⁴

2 4. In its rate base determinations, the Decision relies on a skewed formulation of the
3 evidentiary record that overlooks extensive evidence submitted by Ducor, rendering the decision
4 incompatible with “substantial evidence in light of the whole record.”⁷⁵

5 Each of these errors individually is sufficient for a reviewing court to annul the Decision, but,
6 collectively, they create a powerful basis for a legal challenge of the Decision’s refusal to
7 acknowledge the current, updated value of the property and other assets that Ducor has devoted
8 to public use.

9 These grounds for rehearing present predominantly questions of law, and even to the
10 extent that they implicate factual determinations, the California Supreme Court has recently
11 confirmed in *Center for Biological Diversity, Inc. v. Public Utilities Commission* that there is no
12 longer a “highly deferential” standard applied to evidentiary findings in Commission decisions.⁷⁶
13 In repudiating the prior standard of review from *Greyhound Lines, Inc. v. Public Utilities*
14 *Commission*,⁷⁷ the Supreme Court concluded that the 1998 amendments to Public Utilities Code
15 Section 1757 signaled a Legislative intent to authorize more rigorous judicial review of
16 Commission decisions, paralleling the “inquiry prescribed under the general administrative
17 mandamus statute.”⁷⁸ Therefore, it is no longer true that Commission findings will be upheld as
18 long as the Commission “regularly pursued its authority.”⁷⁹ As *Center for Biological Diversity*
19 explains, Section 1757 does not obligate a reviewing court to defer to the Commission’s factual
20 findings or interpretation of the evidentiary record in matters involving “utility service providers
21 with competitive markets,”⁸⁰ which the telecommunications market plainly is. Particularly in
22 light of this recent California Supreme Court authority, the Commission cannot rely on claims of

23 ⁷⁴ Pub. Util. Code § 1757(a)(6).

24 ⁷⁵ Pub. Util. Code § 1757(a)(4).

25 ⁷⁶ See *Center for Biological Diversity, Inc. v. Pub. Util. Comm’n* (2025) 18 Cal. 5th 293, 308 (“we
conclude that the Court of Appeal erred by relying on [a] highly deferential approach.”).

26 ⁷⁷ *Greyhound Lines, Inc. v. Pub. Util. Comm’n* (1968) 68 Cal. 2d 406.

27 ⁷⁸ *Center for Biological Diversity, supra*, 18 Cal. 5th at 304.

28 ⁷⁹ *Id.* at 303 (“After careful examination of the effect of the legislative changes, we now conclude that, for
the category of cases in which the “regularly pursued its authority” standard is no longer in effect, the
degree of deference prescribed in *Greyhound* no longer governs review under Public Utilities Code
section[] 1757.”).

⁸⁰ *Id.* at 305.

1 deference to obviate or minimize the legal errors that this Decision presents; Ducor's identified
2 errors are material and they must be corrected on rehearing or they will be subject to annulment
3 by a reviewing court.

4 **IV. THE DECISION'S REFUSAL TO APPLY ESTABLISHED RATEMAKING**
5 **STANDARDS FOR DETERMINING DUCOR'S RATE BASE CONSTITUTES AN**
6 **IMPERMISSIBLE DEVIATION FROM THE COMMISSION'S OWN RULES AND**
7 **A FAILURE TO PROCEED IN THE MANNER REQUIRED BY LAW**

8 The Commission recently developed clear ratemaking standards for CHCF-A participants
9 in D.21-06-004, and the Decision's failure to follow those requirements in determining Ducor's
10 rate base amounts to legal error. These ratemaking standards require, *inter alia*, that all CHCF-A
11 participants, including Ducor, "shall use the rate case amount from the National Exchange
12 Carrier Association's most recent cost study as a proposed rate base for each General Rate Case
13 Test Year."⁸¹ Specifically, the Commission determined that "the rate base amount from NECA's
14 latest cost study as a starting point of a rate base for each GRC Test Year," which is necessary
15 "to support transparency and to ensure that cost recovery is appropriate."⁸² The Commission
16 also determined that adjustments could only be made "for new additions, closure of plants, or
17 other changes that have occurred since the year of the NECA cost study."⁸³ There was
18 significant discussion regarding the propriety of this approach.⁸⁴ Among the Commission's
19 reasons to support the use of the latest NECA cost study included that "the recorded NECA cost
20 study rate base amounts are comparable to the GRC forecasted amounts," that it would "ensure
21 proper jurisdictional allocation," and that the NECA cost study "also incorporates the most
22 recent recorded level of plant additions and depreciation, which will help streamline the GRC
23 process."⁸⁵

24 Despite the unequivocal rules that the Commission established in D.21-06-004, the
25 Commission cites its "discretion to evaluate and approve any adjustments . . . for

26 ⁸¹ D.21-06-004 at 44 (OP 10).

27 ⁸² *Id.* at 33.

28 ⁸³ *Id.* at 33–34.

⁸⁴ *Id.* at 30–31 (summarizing positions from Cal Advocates and CHCF-A participants regarding Cal
Advocates' proposal to use the NECA cost study to determine rate base).

⁸⁵ *Id.* at 34.

1 reasonableness”⁸⁶ to depart from the rate base from Ducor’s 2022 NECA cost study,⁸⁷ which
2 reflects use of the updated fair market value following Ducor’s 2021 transfer of control. The
3 Commission’s discretion, however, is not so broad. Appellate courts have long held that a legal
4 error has occurred when the Commission fails to follow its own rules,⁸⁸ including in the context
5 of administering the CHCF-A program.⁸⁹ Here, the Decision’s legal error is patently clear; it
6 simply fails to use the rate base in Ducor’s 2022 NECA cost study as the “starting point,” subject
7 to adjustments for new additions, closure of plants, or other changes that occurred after the
8 NECA cost study was finalized. There is no doubt that the 2022 NECA cost study utilizes the
9 updated rate base following Ducor’s 2021 transfer of control, which reflects the fair market value
10 of Ducor’s assets.⁹⁰ Nor is there any doubt that NECA accepted the 2022 cost study without
11 altering or questioning the fair market value adjustment and ASC 805 push-down.⁹¹ Rather than
12 use the figure from the latest cost study, which is required by the Commission’s own rules, the
13 Decision opts for an outdated rate base figure that reflects the original value of Ducor’s assets
14 prior to the 2021 transfer control.

15 There is no plausible interpretation of D.21-06-004 that supports the Commission’s use
16 of an outdated rate base that predates that of the 2022 NECA cost study. D.21-06-004 does not
17 contemplate adjustments for “reasonableness.” It only allows adjustments for “new additions,
18 closure of plants, or other changes that have occurred *since* the year of the NECA cost study.”⁹²

20 ⁸⁶ D.25-08-010 at 35.

21 ⁸⁷ Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 18:5-9 (“Ducor’s latest submitted NECA cost study at the
time of the filing of this general rate case was the 2022 cost study”).

22 ⁸⁸ See *S. Cal. Edison Co. v. Pub. Util. Comm’n.*, 140 Cal. App. 4th 1085, 1091, 1104–107 (2006) (holding
23 that the Commission “did fail to proceed in the manner required by law in that it violated its own
procedural rules”); see also *Golden State Water Co. v. Pub. Util. Comm’n.*, 16 Cal. 5th 380, 394–95 (2024)
24 (holding that the Commission erred when it failed to comply with the statutory scoping memo
requirement); see also *S. Cal. Edison Co. v. Pub. Util. Comm’n.*, 85 Cal. App. 4th 1086, 1090, 1105–1106
25 (2000) (finding the Commission abused its discretion for engaging in a practice not conforming to G.O. 96-
A).

26 ⁸⁹ See, e.g., *Calaveras Tel. Co. v. Pub. Util. Comm’n.* (2019) 39 Cal. App. 5th 972, 983–84 (finding that the
Commission abused its discretion when it failed “to proceed in the manner required by law and abused its
discretion because its resolution and decision do not conform with the CHCF-A implementing rules”).

27 ⁹⁰ Exh. DTC-3 (*Huckaby Opening Testimony*) at 53:24–54:5.

28 ⁹¹ Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 16:9-13, 18:15-17

⁹² D.21-04-006 at 33–34 (allowing adjustments “for new additions, closure of plants, or other changes that
have occurred *since* the year of the NECA cost study”) (emphasis added).

1 The 2021 transfer of control that allowed Ducor to update its rate base to reflect the fair market
2 value of its assets occurred *before* the 2022 NECA cost study; shifting the rate base to a point in
3 time that predates Ducor’s latest cost study is not permitted by D.21-06-004. As noted, the use
4 of the latest NECA cost study to determine rate base was a contested issue, and the Commission
5 offered numerous reasons to support this approach in D.21-06-004.⁹³ Now, the Commission
6 should not be permitted to depart from its well-reasoned directives simply because those
7 directives generated an outcome that is both unexpected and unpreferred by the Commission.

8 **V. THE DECISION RELIES ON FLAWED AND INCOMPLETE REASONING TO**
9 **REJECT DUCOR’S UPDATED RATE BASE, RESULTING IN AN ARBITRARY**
10 **AND CAPRICIOUS VALUATION OF DUCOR’S ASSETS THAT CONSTITUTES**
11 **AN ABUSE OF DISCRETION**

12 The Decision offers four reasons to support its rejection of Ducor’s updated rate base,
13 including that: (1) the revaluation of Ducor’s assets is only permissible according to USOA
14 accounting rules if it does not generate significant rate effects; (2) Commission practice requires
15 rate base to be determined using the original value of Ducor’s assets when they were first put
16 into service; (3) the updated value of Ducor’s assets would generate CHCF-A support that
17 impermissibly burdens contributors to the CHCF-A program pursuant to Public Utilities Code
18 Section 275.6(c)(7); and (4) neither D.21-06-004 nor D.21-11-006 authorize using the updated
19 value of Ducor’s assets to calculate rate base. Each of these reasons offered by the Decision are
20 flawed and bereft of legal or evidentiary support. As a result, Ducor was left with an arbitrary
21 and capricious valuation of its assets, which constitutes an abuse of discretion.⁹⁴ These
22 insufficiencies are addressed in turn.

23 **A. The FCC Does Not Condition the Use of Fair Market Value to There Being**
24 **Insignificant Rate Effects**

25 The Decision mischaracterizes FCC Report and Order 17-15 to incorrectly conclude that

26 ⁹³ *Id.* at 29-34.

27 ⁹⁴ Pub. Util. Code §§ 1757(a)(2), (5); *see also Woodbury v. Brown-Dempsey* (2003) 108 Cal. App. 4th 421,
28 438 (If an agency’s interpretation of a law or rule is “arbitrary and capricious,” that action is an abuse of
discretion); *City of Stockton v. Marina Towers LLC* (2009) 171 Cal. App. 4th 93, 114 (“A gross abuse of
discretion occurs where the public agency acts arbitrarily or capriciously, [or] renders findings that are
lacking in evidentiary support”); *Zuehlendorf v. Simi Valley Unified Sch. Dist.* (2007) 148 Cal. App. 4th 249,
256 (actions “not supported by a fair or substantial reason” are also arbitrary and capricious).

1 the revaluation of Ducor’s assets can only be recognized if it does not generate significant rate
2 effects.⁹⁵ In aligning the USOA standards more closely with GAAP, the FCC revised the USOA
3 standards to “allow carriers to reprice an asset at market value after a merger or acquisition.”⁹⁶
4 In doing so, the FCC determined that the “record is barren of evidence” that there is “*any value*”
5 in requiring “carriers to price assets differently than they would in the ordinary course of
6 business.”⁹⁷

7 The notion of “significant rate effects,” upon which the Decision relies heavily, was only
8 raised in response to the “the Rural Associations’ argument that no changes should be made to
9 the USOA for rate-of-return carriers.”⁹⁸ Even then, the Rural Associations’ argument was
10 rejected primarily because it failed to “identify any of the reforms we are adopting as significant”
11 and because the record shows that the “paperwork-reducing reforms” will be beneficial to rural
12 carriers.”⁹⁹ The FCC only notes that it does not “anticipate any significant rate effects” resulting
13 from the reform as a secondary reason to support its rejection of Rural Associations’
14 argument.¹⁰⁰

15 In full view of FCC 17-15, it is clear that the FCC did not intend to limit use of the
16 market value of a company’s assets to circumstances in which there were no “significant rate
17 effects.”¹⁰¹ There is no mention of “significant rate effects” in the governing regulation.¹⁰² Even
18 if the FCC had included such a limitation, it would not apply here because Ducor did not use the
19 fair market value of its assets in rate base to achieve a customer rate increase. In fact, Ducor did
20 not seek a rate increase at all.¹⁰³ The Commission independently adopted a 6% rate increased
21 based on its reasonableness analysis, considering the “range of reasonableness,” “the interests of
22 Ducor’s customers” which include affordability factors, and the interests of “California
23

24 ⁹⁵ D.25-08-010 at 30–31 (acknowledging that use of the fair market value is permissible under prevailing
accounting standards).

25 ⁹⁶ *Id.* at ¶ 23; *see also* 47 C.F.R. § 32.2000.

26 ⁹⁷ *Id.* at ¶ 23 (emphasis added).

26 ⁹⁸ *Id.* at 28.

27 ⁹⁹ *Ibid.*

27 ¹⁰⁰ *Ibid.*

28 ¹⁰¹ *See* 47 C.F.R. § 32.2000 (the revised USOA rule does not include a “significant rate effect” limitation).

28 ¹⁰² *Ibid.*

¹⁰³ A.23-10-008 at 19:10–20:20.

1 ratepayers who fund the CHCF-A.”¹⁰⁴ Moreover, if the Decision were correct that the fair
2 market value adjustment was subject to an exception based on rate impacts, NECA could not
3 have accepted the adjusted rate base in the 2021 or 2022 cost studies—but *it accepted both*,
4 proving that the alleged limitation from FCC 17-15 was inapplicable, even if it could be
5 construed as suggested in the Decision.

6 **B. The Decision Fails to Offer Fair or Substantial Reason to Mandate the Use of**
7 **“Original Value” in Determining Ducor’s Rate Base**

8 The Decision asserts, without support, that to determine rate base pursuant to Public
9 Utilities Code Section 275.6(b)(2), “the value of a telephone corporation’s plant and equipment
10 should be based on the original cost of the asset when it was first put into service.”¹⁰⁵ However,
11 Public Utilities Code Section 275.6(b)(2), which defines rate base, does not require use of the
12 “original cost of the asset,” and does not reference the concept of “original value” in a single
13 instance.

14 Instead, the Decision relies on *one* historic decision, D.97-06-066 to support its
15 proposition.¹⁰⁶ However, that decision has no bearing on the ratemaking standards for small
16 independent telephone corporations or CHCF-A participants. As an initial matter, D.97-06-066
17 did not resolve a rate case, nor did it concern telephone corporations. Rather, it involved a
18 transfer of assets and associated transfer of control issues for “vessel common carriers.”¹⁰⁷ Even
19 setting that aside, in D.97-06-066, the Commission allowed a ferry company to issue debt
20 associated with the purchase of assets that exceeded the original value, on the condition that the
21 ferry company agreed “not to raise rates for ferry services.”¹⁰⁸ The Commission’s condition was
22 born from the concern that the costs associated with the transaction would “cause [the ferry
23 company] to raise fares . . . in order to recover these costs.”¹⁰⁹ As discussed, this concern is
24 immaterial; the Commission rejected Ducor’s proposal to maintain current rates, and
25

26 ¹⁰⁴ D.25-08-010 at 13.

27 ¹⁰⁵ *Id.* at 32.

28 ¹⁰⁶ D.25-08-010 at 26, 32, n. 54, 77

¹⁰⁷ D.97-06-066 at 28–29.

¹⁰⁸ *Id.* at 28.

¹⁰⁹ *Ibid.*

1 independently ordered a 6% increase to end-user rates based on its reasonableness analysis,
2 which did not include consideration of the value of Ducor's assets.¹¹⁰ Ultimately, D.97-06-066
3 did not reject the market value of the ferry company's assets, and any ratemaking determinations
4 it made were for a different type of utility, in an entirely different context. If the Commission
5 wishes to apply the general propositions offered in a highly distinguishable decision, it must
6 offer a well-reasoned explanation or its conclusion constitutes legal error.¹¹¹

7 **C. The Updated and Current Value of Ducor's Assets Does Not Excessively**
8 **Burden Contributors to the CHCF-A Program**

9 The Decision correctly identifies that Public Utilities Code Section 275.6(c)(7) requires
10 that any CHCF-A support authorized by the Commission "is not so excessive so that the burden
11 on all contributors to the CHCF-A program is limited," but incorrectly concludes that the use of
12 Ducor's fair market value would result in an excessive CHCF-A draw.¹¹² Public Utilities Code
13 Section 275.6(c)(7) does not mandate the use of "original value" of a company's assets. Ducor's
14 proposed rate base properly relies on the fair market value of its assets, which was derived from
15 a bargained-for purchase. That this generates an increase to the CHCF-A draw is not
16 categorically excessive. Nor is it excessive simply because the Decision deems it "the artificial
17 result of fluctuations in the assets' value."¹¹³ Tellingly, the Decision does not cite any authority
18 to support the proposition that an increase to a CHCF-A draw based on an arms-length
19 transaction is an "undue burden on contributors to the CHCF-A."¹¹⁴ Likewise, Ducor is not
20 aware of any authority that supports the Commission's contention.

21 Putting aside the Decision's unsupported conclusions, a brief analysis shows that the
22 increase in CHCF-A support owing to the ASC 805 "push down" is anything but excessive, and
23 the impact on CHCF-A contributors is infinitesimal. Ducor's CHCF-A draw would only
24

25 ¹¹⁰ D.25-08-010 at 13 (ordering a 6% based on the "range of reasonableness," "the interests of Ducor's
26 customers" which included affordability factors, and the interests of "California ratepayers who fund the
CHCF-A.").

27 ¹¹¹ *Zuehlendorf*, 148 Cal. App. 4th at 256 (actions "not supported by a fair or substantial reason" are also
arbitrary and capricious).

28 ¹¹² D.25-08-010 at 32-33.

¹¹³ D.25-08-010 at 32.

¹¹⁴ *Id.* at 33.

1 increase by \$129,627 based on the fair market value of Ducor's assets.¹¹⁵ This represents a mere
2 0.26% increase to the \$50 million fund.¹¹⁶ In terms of contributor impact, this 0.26% increase to
3 the CHCF-A fund yields a contribution of *two hundredths of a penny* per contributor.¹¹⁷ There is
4 no conceivable way in which this nominal amount could be characterized as unduly burdensome,
5 and the Commission cannot deem it as such simply because it does not like the underlying reason
6 for the increase to Ducor's CHCF-A draw.

7 **D. The Decision Mischaracterizes Ducor's References to the Phase 2 Decision in**
8 **the CHCF-A Rulemaking and the Decision Resolving its Transfer of Control**
9 **Proceeding**

10 The Decision fails to adequately explain why it deviates from the directive to use Ducor's
11 NECA cost study as the starting point to determine rate base.¹¹⁸ The Commission's failure to
12 justify its deviation from D.21-06-004 is arbitrary and capricious, which constitutes an abuse of
13 discretion.¹¹⁹

14 In addition, the Decision erroneously states that Ducor claims that, in D.21-06-004, the
15 Commission made a determination on the "adjustment of assets . . . from original value to fair
16 market value."¹²⁰ Ducor's position is, and has always been, that D.21-06-004 requires that the
17 Commission use the rate base in the latest NECA cost study as a starting point for rate base
18 calculations, and that adjustments are only permitted for changes in circumstances occurring *after*
19 the cost study, including plant additions or retirements.¹²¹ Ducor does not believe that D.21-06-

20 ¹¹⁵ *Id.*, Appendix A. (Line 1.a) (the Decision also includes an adjustment for the increase in basic residential
21 and business rates, which Ducor is not disputing in this Application).

22 ¹¹⁶ See Res. T-17818 at 8 (Table 4) (denoting 2024–2025 "projected expenditures" under the CHCF-A
23 program totaling \$49,554,000). Ducor notes that this nearly \$50,000,000 figure is not devoted to carrier
claims, which are much lower. Based on the resolution establishing carrier draws from the CHCF-A for
2025, the total amounts to be distributed to carriers like Ducor in 2025 are less than \$28 million. See Res.
T-17868 at 1.

24 ¹¹⁷ The current public policy fund surcharge is \$0.90 per line, and the CHCF-A program is allocated 6.60%
of that figure, which is approximately \$0.06 per month. Multiplying the 6 cents by the 0.26% impact that
25 Ducor's proposal has on the fund yields in a customer impact of \$0.000156.

26 ¹¹⁸ D.21-06-004 at 44 (OP 10). Section IV of this rehearing request provides a detailed discussion regarding
the impropriety of the Decision's rejection of the fair market value of Ducor's assets, which represents a
departure from the clear requirements of D.21-06-004. That discussion is incorporated by reference.

27 ¹¹⁹ *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.* (1983) 463 U.S. 29, 42; *McPherson v. Pub.*
Employment Relations Bd. (1987) 189 Cal. App. 3d 293, 308–309, 311.

28 ¹²⁰ D.25-08-010 at 35.

¹²¹ *Supra*, Section IV; Exh. DTC-4 (*Huckaby Rebuttal Testimony*) at 20:6-19.

1 004 made a determination on the use of fair market value over original value to determine the rate
2 base, only that the rate base must start with the figure within the NECA cost study. Likewise, it is
3 patently false that Ducor “attempts to assert” that D.21-11-006, the 2021 transfer of control
4 decision, “approve[d] or assess[ed] a fair market value amount”¹²² or that it otherwise made a
5 determination regarding “adjustment of assets . . . from original value to fair market value.”¹²³
6 Ducor has never suggested, nor does it believe, that D.21-11-006 had any sort of ratemaking
7 impact.¹²⁴ In fact, in the transfer of control proceeding, Ducor requested that the Commission
8 defer the assessment of the fair market value to this proceeding.¹²⁵

9 **VI. THE DECISION’S FAILURE TO ACKNOWLEDGE THE UPDATED VALUE OF**
10 **DUCOR’S ASSETS STRIPS DUCOR OF CRITICAL REVENUES NECESSARY**
11 **TO SUPPORT ITS RURAL TELECOMMUNICATIONS OPERATIONS, IN**
12 **VIOLATION OF CONSTITUTIONAL REQUIREMENTS**

13 Public Utilities Code Section 1757 sets forth the grounds under which Commission
14 ratemaking decisions are subject to annulment.¹²⁶ Among the grounds for annulment is when an
15 “order or decision of the commission violates any right of the petitioner under the Constitution of
16 the United States or the California Constitution.”¹²⁷ The Decision effectuates a \$129,627
17 shortfall in Ducor’s revenue requirement and a corresponding unjustified reduction to its
18 anticipated revenues and CHCF-A support. This shortfall is the direct consequence of the
19 Commission’s refusal to acknowledge the current, updated value of Ducor’s assets that have
20 been put to public use, and the “total effect” of its rate order is unconstitutional because it does
21 not “afford sufficient compensation.”¹²⁸ Because Ducor’s revenue requirement cannot be
22 adjusted between rate cases, the harmful effects of this shortfall will recur annually for at least
23 five years if the infirmities are not corrected through this rehearing request.¹²⁹

24 ¹²² D.25-08-010 at 33.

25 ¹²³ D.25-08-010 at 35.

26 ¹²⁴ *See, e.g., Ducor Opening Brief* at 21 (rejecting Cal Advocates’ position that any ratemaking implications
would be addressed during the transfer of control proceeding because “transfer of control applications are
governed by Public Utilities Code Section 854, which does not involve ratemaking determinations.”).

27 ¹²⁵ *Ducor Opening Brief* at 31.

28 ¹²⁶ Pub. Util. Code § 1757 (addressing the standard of review for Commission ratemaking decisions).

¹²⁷ Pub. Util. Code § 1757(a)(6).

¹²⁸ *Duquesne, supra*, 488 U.S. at 308; U.S. Const., amends. V, XIV.

¹²⁹ D.20-08-011, Appendix C.

1 Under constitutional takings authorities, a rate order must “permit [the utility] to earn a
2 return on the value of property which it employs for the convenience of the public” at levels that
3 are “equal to that generally being made at the same time and in the same general part of the
4 country on investments in other business undertakings which are attended by corresponding,
5 risks and uncertainties.”¹³⁰ Rate orders must include a “return . . . sufficient to assure confidence
6 in the financial integrity of the enterprise, so as to maintain its credit and attract capital.”¹³¹
7 California appellate authorities echo these principles, explaining that a utility’s revenue
8 requirement and its rate design must be equal.¹³² A public utility rate structure will be
9 unconstitutional if it does not provide “enough revenue not only for operating expenses, but also
10 for the capital costs of the business.”¹³³

11 In this case, the disconnect between Ducor’s revenue requirement and rate design is
12 indisputable. The value of Ducor’s assets, established through the 2021 revaluation and ASC
13 805 “push down,” is \$8,367,885, yielding a total rate base of \$6,159,136.¹³⁴ Yet, the Decision
14 refuses to recognize the actual value of these assets, and in doing so, only allows Ducor to
15 recover a return on a rate base of \$1,582,124.¹³⁵ The Commission’s refusal to recognize the
16 actual value of assets results in a shortfall of \$129,627 in Ducor’s revenue requirement, which
17 results in an unjustified reduction to its anticipated revenues and CHCF-A support and recurring
18 injuries for every year in which this inadequate revenue requirement remains in place.¹³⁶ This
19 shortfall means that Ducor’s rate structure will not compensate Ducor for the full value of the
20 assets that it has put to public use. This outcome is forbidden by the governing statute and
21

22 ¹³⁰ *Bluefield Water Works v. Pub. Serv. Comm’n* (1923) 262 U.S. 679, 692.

23 ¹³¹ *See Hope, supra*, 320 U.S. at 603 (“From the investor or company point of view it is important that there
be enough revenue not only for operating expenses but also for the capital costs of the business”).

24 ¹³² *See, e.g., S. Cal. Gas Co. v. Pub. Util. Comm’n* (2023) 23 Cal.3d 470, 476 (The purpose of rate of return
regulation is to “establish a rate which will permit the utility to recover its cost and expenses plus a
25 reasonable return on the value of the property devoted to public use.”); *Ponderosa v. Pub. Util. Comm’n*
(2011) 197 Cal. App. 4th 48, 51–52.

26 ¹³³ *See Hope, supra*, 320 U.S. at 603 (“From the investor or company point of view it is important that there
be enough revenue not only for operating expenses but also for the capital costs of the business”).

27 ¹³⁴ D.25-08-010 at Appendix A (Lines 3 and 3.1).

28 ¹³⁵ *Id.* (Line 3).

¹³⁶ *Id.* (Line 1.a) (the Decision also includes an adjustment for the increase in basic residential and business
rates, which Ducor is not disputing in this Application).

1 creates an unconstitutional taking.

2 **VII. THE DECISION MISCONSTRUES THE COMPELLING EVIDENCE**
3 **SUPPORTING DUCOR’S RATE BASE CALCULATIONS, MAKING THE**
4 **DECISION’S FINDINGS INCOMPATIBLE WITH THE SUBSTANTIAL**
5 **RECORD EVIDENCE IN LIGHT OF THE WHOLE RECORD**

6 Commission decisions must make findings that are “supported by substantial evidence in
7 light of the whole record.”¹³⁷ The failure to do so constitutes an abuse of discretion, and is
8 grounds for annulment of that decision.¹³⁸ The evidentiary record overwhelmingly supports
9 Ducor’s rate base calculation, which includes the current, actual value of Ducor’s assets. The
10 record shows that the 2021 transfer of control triggered a lawful revaluation, and the subsequent
11 push down accounting pursuant to ASC 805.¹³⁹ The record also shows that the revaluation was
12 conducted by an independent accounting firm based on a comprehensive analysis of Ducor’s
13 assets, and that the updated financial statements were formally reviewed and affirmed by a
14 different independent accounting firm.¹⁴⁰ There is also ample evidentiary support showing that
15 the use of fair market value in Ducor’s rate base figure was accepted by NECA in Ducor’s
16 federal cost study.¹⁴¹ The Decision does not identify any factual evidence to the contrary.

17 Instead, as detailed in prior sections, the Decision relies on unsupported interpretations of
18 FCC 17-15, Public Utilities Code Section 275.6(b)(2) and (c)(7), and D.21-06-004 an attempt in
19 to justify its departure from the clear ratemaking standards established by each of these statutes
20 and authorities. The Commission is not permitted to offer implausible interpretations of law or
21 rule; doing so is arbitrary and capricious, and amounts to an abuse of discretion.¹⁴² Nor can the
22 Commission rely on claims of deference to its reasoning—that construct was denounced in

23 ¹³⁷ Pub. Util. Code § 1757(a)(4).

24 ¹³⁸ *E.g., Stockton*, 171 Cal. App. 4th at 114 (“A gross abuse of discretion occurs where the public agency
25 acts arbitrarily or capriciously, [or] renders findings that are lacking in evidentiary support”); *see also*
26 *Zuehlendorf, supra*, 148 Cal. App. 4th at 256 (actions “not supported by a fair or substantial reason” are also
27 arbitrary and capricious)

28 ¹³⁹ *Supra*, Section II(D) at 9:2-3, n. 35.

¹⁴⁰ *Id.* at 9:3-9, ns. 36-38.

¹⁴¹ *Id.* at 9:9-11, n. 39.

¹⁴² *See Woodbury*, 108 Cal. App. 4th at 438 (If an agency’s interpretation of a law or rule is “arbitrary and
capricious,” that action is an abuse of discretion); *see also Zuehlendorf*, 148 Cal. App. 4th at 256 (actions
“not supported by a fair or substantial reason” are also arbitrary and capricious).

1 *Center for Biological Diversity*.¹⁴³

2 **VIII. CONCLUSION**

3 The Commission cannot pick and choose when to apply its own rules, nor can it ignore
4 its own ratemaking standards where it does not like the results of their application. The
5 Decision's failure to apply the rate base standards in D.21-06-004 constitutes a material legal
6 error that imposes an unconstitutional taking of Ducor's property through an artificially low
7 CHCF-A draw. The Decision's improper insistence on using "original value" conflicts with the
8 record evidence and the applicable ratemaking authorities governing rate base. To avoid
9 annulment of the Decision by the Court of Appeal, the Commission should correct this error and
10 promptly restore \$129,627 in CHCF-A to Ducor through a timely decision on rehearing

11 Executed at Oakland, California on this 22nd day of September, 2025.

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¹⁴³ *Center for Biological Diversity, supra*, 18 Cal. 5th at 304–305.